

[REDACTED]
[REDACTED]
[REDACTED]
AUG 05 1983

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

You are a testamentary trust created through the will of [REDACTED]. According to the trust document, your primary purpose shall be to pay the cost of the maintenance of the [REDACTED] cemetery lot and to place floral arrangements on the lot. A secondary purpose shall be to pay the expense of redecorating, improving and beautifying the interior of [REDACTED] from time to time as the assets of the trust fund allow and as said trustees determine necessary. The trust fund shall maintain a minimum amount of \$[REDACTED], the income from which is expected to be sufficient to meet the primary purpose of the trust. Funds in excess of that amount may be used by the trustees to fulfill the secondary purpose of the trust, provided always that the primary purpose be fulfilled prior thereto.

Apparently your only activity so far has been to provide some flowers for cemetery lots, but you have projected that the large majority of your expenditures will be for improvements to the church.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

Code	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname		[REDACTED]				
Date		8-5-83				

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(b)(1)(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(1) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

"(b)(4) Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Revenue Ruling 58-190, 1958-1 C.B. 15 states that the income of a trust established and designed for the purpose of furnishing perpetual care for a particular mausoleum crypt or burial lot inures to the benefit of the grantor and thus the organization was not exempt.

Revenue Ruling 69-256 1969-1 C.B. 151 held that a testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot was not exempt under section 501(c)(3) of the Code. Payments for the care of the lot constituted inurement of a part of the trust's net earnings to the benefit of a private interest. Therefore, the trust was being operated for the benefit of a private interest and would not qualify for exemption.

Your primary purpose, as stated in your trust document, is a private purpose and not a charitable one. In addition, your trust document contains no dissolution provision, as required by section 1.501(c)(3)-1(b)(4) of the regulations, to provide that, upon dissolution, your assets will be distributed for charitable purposes. Accordingly, you do not meet the organizational requirements of section 501(c)(3) of the Code and the regulations thereunder.

While your activity of providing funds to a church may serve a charitable purpose, you are also serving a private purpose by maintaining the testator's cemetery lot. You are being operated for the benefit of a private interest like the organizations described in Revenue Rulings 58-190 and 69-236 above. Accordingly, you are not operated exclusively for charitable purposes.

Therefore, because you are not organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, tax-exemption is denied. You should file Federal income tax returns and contributions to you are not tax-deductible.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with the conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope.

[REDACTED]

If you have any further questions, you may contact the person whose name, number and address are shown at the beginning of this letter.

Sincerely yours,

[REDACTED]
District Director

Enclosures
Form 6018
Publication